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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SERGIO L. RAMIREZ, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

TRANS UNION, LLC,

Defendant.

Case No. 12-cv-00632-JSC

Class Action

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION FOR CLARIFICATION OF
CLASS CERTIFICATION ORDER**

Date: February 12, 2015

Time: 9:00 a.m.

Place: Courtroom F

1 **I. INTRODUCTION**

2 In its Response in Opposition to Plaintiff’s Motion to Certify Class (Dkt. No. 128),
3 Defendant Trans Union, LLC (Trans Union) made various arguments intended to reduce the size
4 of the class, including arguing that only consumers who had OFAC data delivered to a potential
5 creditor should be included in the class. The Court rejected these arguments and held in its Order
6 that the class “need not be as limited as Defendant insists.” *Ramirez v. Trans Union, LLC*, 301
7 F.R.D. 408, 417 (N.D. Cal. 2014). Nonetheless, Defendant now seeks to relitigate this same
8 issue through its motion for clarification. Because the Court’s Order resolves the issue, and
9 comports with well-settled Ninth Circuit precedent and the plain meaning of the text of the Fair
10 Credit Reporting Act (FCRA), Defendant’s motion should be denied.

11
12 **II. ARGUMENT**

13 The present motion purportedly seeks clarification of the Court’s July 24, 2014 Order on
14 class certification in this matter. Plaintiff moved to certify a class of consumers with claims
15 under two different sections of the FCRA. Plaintiff presented evidence that Trans Union advised
16 each member of the class in writing that it had collected information from the OFAC watch list
17 which Trans Union expected to sell to third parties for the purpose of evaluating consumers’
18 eligibility for credit. *See* Dkt. No. 122, Plaintiff’s Motion to Certify Class at p.13; Dkt. No. 110-
19 24, Exhibit 14 to Motion to Certify Class. Plaintiff contends that Trans Union erroneously
20 associated each class member with the OFAC list in violation of FCRA section 1681e(b).
21 Plaintiff also presented evidence that Trans Union failed to provide class members with a
22 complete disclosure of the information contained in their consumer files and a summary of their
23 FCRA rights, in violation of FCRA section 1681(g).
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1 This Court certified a single class of 8,192 consumers for both claims. *Ramirez*, 301
2 F.R.D. at 426. Because the Ninth Circuit denied Defendant’s petition for review of the
3 certification decision (Dkt. No. 156), the next step will be to send notice to the class. Although
4 notice will be sent to all 8,192 members of the class in any event, Defendant now repeats its
5 argument that only some of the class members have claims under FCRA section 1681e(b). Dkt.
6 No. 149. Defendant’s motion should be denied because it is not supported by the FCRA or
7 applicable case law.
8

9 FCRA section 1681e(b) imposes liability on consumer reporting agencies which fail to
10 “follow reasonable procedures to assure maximum possible accuracy of the information
11 concerning the individual about whom the report relates” when it prepares a consumer report
12 about any consumer. 15 U.S.C. § 1681e(b). The complete definition of “consumer report” under
13 the FCRA states:
14

15 The term “consumer report” means any written, oral, or other communication
16 of any information by a consumer reporting agency bearing on a consumer’s
17 credit worthiness, credit standing, credit capacity, character, general
18 reputation, personal characteristics, or mode of living which is used or
19 expected to be used or collected in whole or in part for the purpose of serving
20 as a factor in establishing the consumer’s eligibility for--

- 21 (A) credit or insurance to be used primarily for personal, family, or
22 household purposes;
23 (B) employment purposes; or
24 (C) any other purpose authorized under section 1681b of this title.
25

26 15 U.S.C. § 1681a(d)(1). There is no requirement that the communication be to a third party, as
27 Defendant argues. Instead, the key element of the definition, which Defendant overlooks, is
28 “information.” The information itself bears on consumers’ various qualities, not the
communication, and it is the information which is “used or expected to be used,” to make credit
eligibility determinations. The inclusion of the phrase “collected in whole or in part” makes

1 this clear, because consumer reporting agencies are collecting *information*, not communications.

2 Indeed, the purpose of Defendant’s file disclosures, and of the letter sent to each member
3 of the class regarding OFAC, is to communicate to consumers that Trans Union has collected
4 certain information about them which it expects to be used in connection with credit
5 determinations about the class members. *See* Dkt. No. 110-24 (OFAC letter Trans Union sent
6 to each class members stating that “[w]e want you to know that this information may be provided
7 to” financial institutions). Therefore, each of the OFAC letters sent to the 8,192 class members
8 was a “communication” of “information” which was both “collected in whole or in part” and
9 “expected to be used” to make determinations regarding class members’ eligibility for credit,
10 insurance, employment, or other FCRA purposes.
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12 Longstanding Ninth Circuit precedent confirms that a communication sent directly to a
13 consumer is a consumer report within the meaning of the FCRA. *Guimond v. Trans Union Credit*
14 *Info. Co.*, 45 F.3d 1329, 1333-34 (9th Cir. 1995). In *Guimond*, the plaintiff obtained a consumer
15 report directly from Trans Union and alleged that it contained inaccurate information that caused
16 her emotional distress. *Id.* at 1331-32. One of her claims was brought pursuant to FCRA section
17 1681e(b). *Id.* at 1332-33. In rejecting Trans Union’s arguments in a motion to dismiss the
18 section 1681e(b) claim, the Ninth Circuit held that the report that Trans Union sent to the
19 consumer was a “consumer report” and noted that “[n]o court has held that the prima facie case
20 required that an inaccurate report was ever disseminated.” *Id.* at 1333, n. 3.
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23 The *Guimond* Court emphasized that the inquiry should instead center on “whether Trans
24 Union’s procedure for preparing [Plaintiff’s] file contained reasonable procedures to prevent
25 inaccuracies.” *Id.* at 1334. This Court recognized that, as in *Guimond*, the key inquiry in the
26 case at bar is the common question of whether Trans Union’s procedures for including OFAC
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1 information on reports were reasonable. *Ramirez*, 301 F.R.D. at 418-19 (“Here, the question of
2 whether using name-only matching logic assures maximum accuracy is such a [common]
3 question.”).

4 Defendant has presented no binding or persuasive authority to the contrary, instead
5 relying entirely on misreadings of the FCRA by courts outside the Ninth Circuit. Even the
6 *Collins v. Experian Info. Solutions, Inc.* decision submitted by Defendant through a notice of
7 supplemental authority (Dkt. No. 155-1) provides no basis for this Court to modify its order on
8 class certification. In *Collins*, the plaintiff brought a claim under a different section of the FCRA,
9 section 1681i(a), and the issue on appeal was the meaning of the word “file” as used in section
10 1681i(a), as defined in 1681a(g). ___ F. 3d. ___, 2015 WL 55345, at *1-2 (11th Cir. Jan. 5,
11 2015). Neither the meaning of section 1681e(b) nor the question of what constitutes a “consumer
12 report” under section 1681a(d) was before the *Collins* panel. *Id.* The statement in the *Collins*
13 opinion that “[a] ‘consumer report’ requires communication to a third party” is therefore not only
14 a misstatement of the law, as section 1681a(d)(1) contains no such requirement, it is also plainly
15 dicta. *Id.* at *4. To define “consumer report” more narrowly, as Defendant urges, would
16 contravene binding Ninth Circuit precedent and undermine the liberal construction of the FCRA
17 embraced by the Ninth Circuit in order to enact the statute’s broad remedial purpose. *Guimond*,
18 45 F.3d at 1333; *Dunford v. Am. DataBank, LLC*, ___ F. Supp. 2d ___, 2014 WL 3956774, at
19 *8 (N.D. Cal. Aug. 12, 2014).

20 Defendant’s citation to the Consumer Financial Protection Bureau’s (CFPB) December
21 2012 report on credit reporting (the CRA Review) is likewise unavailing. Dkt. No. 149 at pp. 3-
22 4. The CRA Review was compiled “as a public service” to provide basic information regarding
23 the credit reporting process, and specifically states that it is not reaching any legal conclusions
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1 or opinions regarding compliance with applicable laws. Dkt. No. 151 at p. 2. In service of this
2 informational purpose, the report uses the colloquial terms “credit report” and “credit file” to
3 describe different subsets of the broader legal definition of “consumer report.” *Id.* at p. 8 (“For
4 the purposes of this paper, credit reports are a form of ‘consumer report’ as defined by the FCRA
5 This paper refers to ‘credit files’ as the information about a consumer that is contained in
6 the databases of the [national consumer reporting agencies].”). The CFPB’s use of colloquial
7 language to educate consumers about the credit reporting process provides no basis to narrow
8 the FCRA’s broad legal definition.
9

10 Finally, Trans Union’s motion should be denied because this Court has specifically
11 addressed the arguments that Defendant now repeats:

12 While it is undisputed that Trans Union sent letters similar to the March 1, 2011
13 letter Plaintiff received to over 8,000 consumers during the class period, Defendant
14 attempts to redefine the class by narrowing it in various ways, *such as considering*
15 *only consumers who had Name Screen data delivered to a potential credit grantor,*
16 *those who had reports sold by a Trans Union reseller, those who disputed their*
OFAC results, and the like. As explained below, the claims of Plaintiff’s putative
classes present common questions and need not be as limited as Defendant insists.

17 *Ramirez*, 301 F.R.D. at 417 (emphasis added). Instead, the Court certified a single class of 8,192
18 consumers nationwide who all had the same FCRA claims under both section 1681g(a) and
19 section 1681e(b). *Id.* at 426.

20 Notice will be sent to all 8,192 consumers regarding the section 1681g(a) claim
21 regardless of the disposition of Defendant’s motion. The same group should receive notice of
22 the section 1681e(b) claim because as demonstrated above, and as this Court has previously
23 determined, all 8,192 class members have such a claim against Trans Union.
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1 **III. CONCLUSION**

2 For all the reasons set out above, Plaintiff respectfully requests that Defendant's Motion
3 for Clarification be denied.

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5 Respectfully Submitted,

6 Dated: January 22, 2015

FRANCIS & MAILMAN, P.C.

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